

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

PROMPT MEDICAL SYSTEMS, L.P.,

Plaintiff,

vs.

PROVATION MEDICAL, INC.

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

**PLAINTIFF PROMPT MEDICAL SYSTEMS, L.P.'S
ORIGINAL COMPLAINT**

For its Complaint against Defendant ProVation Medical, Inc., Plaintiff Prompt Medical Systems, L.P. alleges as follows:

NATURE OF THIS ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Plaintiff Prompt Medical Systems, L.P. ("PROMPT") is a limited partnership organized and existing under the law of the State of Texas.

3. Defendant ProVation Medical, Inc. ("PROVATION") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 800 Washington Avenue, Suite 400, Minneapolis, MN 55401-1330. PROVATION may be served through its registered agent, CT Corporation System, at 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over PROVATION because it transacts business within this District and elsewhere in the State of Texas. Further, this Court has personal jurisdiction over PROVATION based on its commission of one or more acts of infringement of PROMPT's patent in this District and elsewhere in the State of Texas.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

PATENT INFRINGEMENT

7. PROMPT re-alleges and incorporates by reference herein the allegations set forth in Paragraphs 1-6 above as if fully set forth herein.

8. On January 9, 1996, U.S. Patent No. 5,483,443 ("the '443 patent"), entitled "Method for Computing Current Procedural Terminology Codes from Physician Generated Documentation," was duly and legally issued by the U.S. Patent and Trademark Office. On April 8, 1994, the application which issued as the '443 patent was filed with the U.S. Patent and Trademark Office. A true and correct copy of the '443 patent is attached as **Exhibit A** to this Original Complaint.

9. PROMPT has owned the entire right, title and interest of the '443 patent, including the right to seek damages for all past infringements, throughout the period of PROVATION's infringing acts and still owns the '443 patent.

10. PROVATION has been and is now directly infringing claims 1-15 of the '443 patent in the United States in violation of 35 U.S.C. § 271 by making, using, selling, and/or offering for sale PROVATION MD, PROVATION MULTICAREGIVER, and PROVATION EHR.

11. PROVATION has been and is now indirectly infringing claims 1-15 of the '443 patent in the United States in violation of 35 U.S.C. § 271. PROVATION indirectly infringes by actively

inducing medical professionals who are PROVATION's customers to use PROVATION MD, PROVATION MULTICAREGIVER, and PROVATION EHR including, but not limited to, New Mexico Orthopaedics, Fort Worth Endoscopy Center, and Trinity Mother Frances Digestive Disease Center. PROVATION has been knowingly inducing infringement, and it has possessed the specific intent to encourage its customers' infringement. PROVATION knew or should have known that its actions would induce actual infringement.

12. PROVATION also indirectly infringes by contributing to the infringement of its customers. PROVATION offers for sale and sells its PROVATION MD, PROVATION MULTICAREGIVER, and PROVATION EHR for use in practicing the patented processes of the '443 patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of the '443 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

13. PROVATION will continue to infringe the '443 patent unless and until it is enjoined by the Court.

14. PROVATION has, and will continue, to infringe the '443 patent willfully and with knowledge of the '443 patent.

15. PROVATION has caused and will continue to cause PROMPT irreparable injury and damage by infringing the '443 patent. PROMPT will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until PROVATION is enjoined from infringing the '443 patent.

JURY TRIAL DEMANDED

16. Pursuant to Federal Rule of Civil Procedure 38, PROMPT hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, PROMPT respectfully requests that the Court enter judgment:

- a. that the defendant has infringed the '443 patent;
- b. permanently enjoining the defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '443 patent;
- c. awarding PROMPT its damages in amounts sufficient to compensate it for each of the defendant's infringements of the '443 patent, together with prejudgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- d. an accounting be had for the damages to PROMPT arising out of PROVATION's infringing activities;
- e. that PROVATION be adjudged a willful infringer and that the damages to PROMPT be increased under 35 U.S.C. § 284 to three times the amount found or measured;
- f. an award of attorney's fees to PROMPT under 35 U.S.C. § 285; and
- g. awarding PROMPT such other and further relief as the Court deems just and proper.

Respectfully submitted,

MehaffyWeber, P.C.

/s/ Ernest W. Boyd

Ernest W. Boyd

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